

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2817 - SB 2671

March 13, 2020

SUMMARY OF ORIGINAL BILL: Extends, from 30 to 45, the number of days within the expiration, extension, or denial of an order authorizing a wire, oral, or electronic communication that the issuing or denying judge is required to report outlined information to the Attorney General and Reporter (AG).

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENTS (015802, 016496): Amendment 015802 creates exceptions for the offense of open or concealed carrying of a firearm with the intent to go armed for any person legally in possession and not prohibited from carrying a firearm. Specifies that theft of a firearm worth less than \$2,500 is a Class E felony offense. Enhances the mandatory confinement period for theft of a firearm to 180 days. Creates an enhancement factor when an offense involved the theft of a firearm from a motor vehicle. Requires no release eligibility for certain offenses committed after July 1, 2020 unless 85 percent of an imposed sentence is served, less sentence credits. Prohibits a reduction of such sentences less than 70 percent of the sentence imposed.

Amendment 016496 requires the state to refund all permit application fees paid by current enhanced and concealed handgun carry permit holders.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Expenditures –

\$17,746,700 Incarceration*

\$24,544,800/FY20-21/Handgun Permit Division

\$16,363,200/FY21-22 and Subsequent Years/Handgun Permit Division

Assumptions for the bill as amended:

Expenditures:

- Per the language of this legislation, a person legally in possession of a firearm and not prohibited from purchasing a firearm in the person's state of residence will have the same defenses and exceptions as a person who has been issued a handgun carry permit.
- Further, the state shall refund all current permit application fees paid by current enhanced and concealed handgun carry permit holders. It does not specify a limitation

to “current,” therefore; it is assumed that refunds would be required for all future fees paid as well.

- Based on the figures of the previous five fiscal years, the Department of Safety (DOS) issues an average of 53,805 new EHCP each year and 92,172 EHCP renewals each year.
- CHCP first began being issued on January 1, 2020. A total of 5,217 permits were issued in the month of January.
- It can be reasonably assumed that this figure is exponentially greater than the imminent months’ averages will be. Estimating that this will level out to an average of one-quarter of January’s figures, each month, 15,651 $[(5,217 \times 25\%) \times 12 \text{ months}]$ new CHCPs will be issued annually without this legislation.
- The cost of a new EHCP is \$100. The cost of a renewed EHCP is \$50. From every new EHCP fee paid, \$15 is allocated to the applicable sheriff’s department to cover the cost of a local background check; \$15 is allocated to the Tennessee Bureau of Investigation (TBI) for updating and maintaining their databases; \$31.15 is allocated to the TBI to cover the cost of fingerprint vendors, TBI background checks, and Federal Bureau of Investigation (FBI) fingerprint background checks; the remaining \$38.85 is retained by the Handgun Permit Division (HPD) of DOS to specifically fund the administrative expenses of the HPD.
- As the state must issue the refund, local governments are considered exempt and will not see a significant fiscal impact.
- The recurring increase in state expenditures to the HPD is estimated to exceed \$9,989,100 $[(53,805 \times \$100) + (92,172 \times \$50)]$ each fiscal year.
- Based on the figures of the previous five fiscal years, DOS issues an average of 17,856 new Lifetime Handgun Carry Permits each year.
- The current cost of a Lifetime EHCP is \$300 which is retained entirely by the HPD.
- Thus, there will be a recurring increase in state expenditures \$5,356,800 $(\$300 \times 17,856)$ in FY20-21 and subsequent years
- For every CHCP fee paid, the entirety of the \$65 is retained by the HPD. The expected impact to the HPD is at least \$1,017,315 $(15,651 \times \$65)$ in increased state expenditures in FY20-21 and subsequent years.
- The total increase in expenditures in FY21-22 and subsequent years is \$16,363,215 $(\$9,989,100 + \$5,356,800 + \$1,017,315)$.
- Further, there will be a one-time increase in expenditures to refund all enhanced and concealed handgun carry permit application fees from between January 1, 2020 and the enacting date of this legislation of July 1, 2020. This will result in a \$8,181,608 $(\$16,363,215 \times 50\%)$ expenditure to the HPD.
- The total increase in state expenditures to the HPD in FY20-21 is \$24,544,823 $(\$16,363,215 + \$8,181,608)$.

Convictions:

- Pursuant to Tenn. Code Ann. § 39-17-1307(a), it is a Class C misdemeanor offense to carry, with the intent to go armed, a firearm or a club, punishable with possible imprisonment and/or by a fine not to exceed \$500.
- In the last three fiscal years, there has been an average of 133 Class C misdemeanor offense convictions under this section of code.

- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly increase local revenue.
- There will not be a sufficient reduction of prosecutions for state or local government to experience any significant decrease in revenue or expenditures.

Theft of a Firearm/Theft of a Firearm from a Motor Vehicle Enhancement:

- This analysis assumes the average price of a firearm is less than \$1,000; therefore, theft of a firearm is a Class A misdemeanor under current law.
- Pursuant to Tenn. Code Ann. § 39-14-105(d), theft of a firearm is required to be punished by a minimum of 30 days confinement.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- It is estimated an average of 300 individuals per year are admitted to local incarceration for theft of a firearm.
- Enhancing theft of a firearm to a Class E felony offense will result in a recurring decrease in local incarceration expenditures in FY20-21 and subsequent fiscal years estimated to be \$576,000 (300 admissions x 30 days x \$64).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 25 (300 x .0837) additional admissions for a total of 325 (300 + 25).
- According to the DOC, 30.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level (325 offenders x 30.4% = 99 offenders).
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- The average time served for a Class E felony is 1.35 years.
- Pursuant to Tenn. Code Ann. § 9-4-210, 226 (325 – 99 recidivism discount) offenders will be admitted every year serving 493.09 days (1.35 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$8,415,781 (\$75.52 x 493.09 x 226).
- The proposed legislation creates a sentencing enhancing factor for offenses involving the theft of a firearm from a motor vehicle.
- This analysis assumes 25 percent of theft of firearm offenses will result in a Class D felony enhancement.
- The average time served for a Class D felony is 2.26 years. The average time served for a Class C felony is 1.35 years. The proposed legislation will result in Class D sentence enhancement serving an additional .91 (2.26 – 1.35) years.

- Pursuant to Tenn. Code Ann. § 9-4-210, 56 (226 x 25%) offenders will be admitted every year serving an additional 332.38 days (.91 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$1,405,675 (\$75.52 x 332.38 x 56).
- The average time served for a Class E felony offense exceeds the mandatory minimum confinement period of 180 imposed by the proposed legislation; therefore, any impact resulting from establishing a mandatory minimum is estimated to be not significant.

Sentencing:

- The proposed legislation requires the following offenses occurring on or after July 1, 2020, to have no release eligibility until the person reaches 85 percent of the sentence imposed by the court, less sentence credits earned and retained not to reduce such sentence below 70 percent of the sentence imposed:
 - Unlawful possession of a firearm by a person convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon;
 - Unlawful possession of a firearm by a person convicted of a felony drug offense;
 - Unlawful possession of a handgun by a person convicted of a felony; and
 - Unlawful providing a handgun to a juvenile or permitting a juvenile to possess a handgun.

Unlawful Possession of a Firearm by a Person Convicted of a Felony Crime of Violence, an Attempt to Commit a Felony Crime of Violence or a Felony Involving Use of a Deadly Weapon:

- Pursuant to Tenn. Code Ann. § 39-17-1307(b)(1)(A), unlawful possession of a firearm by a person convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon is a Class B felony.
- Based on information provided by the DOC, there has been an average of 72 admissions each year over the past three years for violations of Tenn. Code Ann. §39-17-1307(b)(1)(A).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 6 (72 x 8.37%) additional admissions for a total of 78 (72 + 6).
- According to the DOC, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (78 offenders x 46.4% = 36 offenders).
- The proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A) by 1,940.39 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.

- Pursuant to Tenn. Code Ann. § 9-4-210, 42 (78 – 36 recidivism discount) offenders will be admitted every year serving an additional 1,940.39 days. The annualized increase in state incarceration expenditures is estimated to be \$6,154,607 ($\$75.52 \times 1,940.39 \times 42$).

Unlawful Possession of a Firearm by a Person Convicted of Felony Drug Offense:

- Pursuant to Tenn. Code Ann. § 39-17-1307(b)(1)(B), unlawful possession of a firearm by a person convicted of a felony drug offense is a Class C felony offense.
- Based on information provided by the DOC, there has been an average of 37 admissions each year over the past three years for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 3 ($37 \times 8.37\%$) additional admissions for a total of 40 ($37 + 3$).
- According to the DOC, 40.4 percent of offenders will re-offend within two years of their release. A recidivism discount of 40.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($40 \text{ offenders} \times 40.4\% = 16 \text{ offenders}$).
- The proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(B) by 955.59 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Pursuant to Tenn. Code Ann. § 9-4-210, 24 (40 – 16 recidivism discount) offenders will be admitted every year serving an additional 955.59 days. The annualized increase in state incarceration expenditures is estimated to be \$1,731,988 ($\$75.52 \times 955.59 \times 24$).

Unlawful Possession of a Handgun by a Person Convicted of a Felony:

- Pursuant to Tenn. Code Ann. § 39-17-1307(c), unlawful possession of a handgun by a person convicted of a felony is a Class E felony offense.
- Based on information provided by the DOC, there has been an average of one admission each year over the past three years for violations of Tenn. Code Ann. §39-17-1307(c).
- Population growth and recidivism will not impact these admissions.
- The proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. §39-17-1307(c) by 511.35 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 511.35 days. The annualized increase in state incarceration expenditures is estimated to be \$38,617 ($\$75.52 \times 511.35 \times 1$).

Unlawful Providing a Handgun to a Juvenile or Permitting a Juvenile to Possess a Handgun:

- Pursuant to Tenn. Code Ann. § 39-17-1320, it is a Class A misdemeanor offense for a person to intentionally, knowingly, or recklessly to provide a handgun with or without remuneration to any person that the person providing the handgun knows or has reason to believe the violation of juvenile knowingly possessing a handgun.
- Based on information provided by Administrative Office of the Courts, there has been an average of .8 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-1320 each year over the last five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of eight convictions ($.8 / 10\% = 8$) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-1320.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- This analysis estimates that on average individuals are sentenced to 100 days in local jail and spending an average of 15 days in local jail.
- The proposed legislation will result in a recurring increase in local incarceration expenditures in FY20-21 and subsequent fiscal years estimated to be \$28,160 $\{ \$64 \times [(100 \times 70\%) - 15] \times 8 \}$.
- Pursuant to Tenn. Code Ann. § 39-17-1320, it is a Class D felony offense for a parent or guardian intentionally, knowingly, or recklessly to provide a handgun to a juvenile or permit a juvenile to possess a handgun, if the parent or guardian knows of a substantial risk that the juvenile will use a handgun to commit a felony.
- Based on information provided by DOC, there have been zero admissions for this violation of Tenn. Code Ann. § 39-17-1320 over the past 10 years.
- Any impact to state incarceration resulting from requiring felony offenses under Tenn. Code Ann. § 39-17-1320 to serve at least 70 percent of the sentence imposed is estimated to be not significant.

Total Impact:

- The total annualized increase in state incarceration expenditures resulting from the proposed legislation is estimated to be \$17,746,668 $(\$8,415,781 + \$1,405,675 + \$6,154,607 + \$1,731,988 + \$38,617)$.
- The total increase in state expenditures to the HPD in FY20-21 is estimated to exceed \$24,544,823. The total increase in state expenditures to the HPD in FY21-22 and subsequent years is estimated to exceed \$16,363,215.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Krista Lee Carsner, Executive Director

/jmg